



ZONING BOARD OF ADJUSTMENT

Draft Minutes

July 28, 2020 - 7:30 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department)

Live Broadcast: WCTV Channel 20 – Local Cable TV

Live Stream: <http://www.wctv21.com/>

Attendance:

Chairman Mike Scholz- present via Zoom

Vice Chair Bruce Breton-excused

Neelima Gogumalla- present at Community Development

Nick Shea- present via Zoom

Betty Dunn- present via Zoom and seated for Pam Skinner

Pam Skinner- excused

Kevin Hughes, alternate- present at Community Development and seated for Vice Chair Breton

(Attendance was taken by roll call vote and all members present via Zoom reported they were alone in the room.)

Staff:

Brian Arsenault: ZBA Administrator/ Code Enforcement

Anitra Lincicum, minute taker

Call to Order

Chairman Scholz explained that Executive Order 2020-04 allowed the meeting to held remotely:

“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, the public body is authorized to meet electronically. Please note that all votes that are taken during the meeting shall be done by roll call vote only.

Let’s start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during the meeting, which is required under the Right-to-Know law.”

The Chairman read the phone number for the public after helping a resident navigate connecting to the meeting remotely.

Public Hearing

Case #11-2020: Parcel 12-A-500

(Continued from June 9, 2020)

Applicant - New Hampshire Catholic Charities

Owner – New Hampshire Catholic Charities

Location – 21 Searles Road

Zoning District - Rural District and Cobbetts Pond & Canobie Lake

Watershed Protection Overlay District (WPOD)

Variance relief is requested from **Section(s) 706.4 and 706.8** to allow four signs to be installed. Specifically from **Sec. 706.4 and Sec. 706.8**: To allow a building sign to be erected larger than the dimensions of signs permitted and the entrance sign to be erected larger than the dimensions of signs permitted with no front lot line setback and along Searles Road two retaining wall signs larger than the dimensions of signs permitted with no front lot line setback.

Attorney Daniel Muller, Attorney Owner's Representative, addressed the Board and is representing the applicant. Attorney Muller is requesting the case be continued to September 8th, 2020. The applicant would like to redesign the signs. The applicant may also need additional zoning relief and they would like to make sure the relief is appropriate. Mr. Arsenault stated that additional relief may be required by the applicant depending on what is proposed. Mr. Arsenault asked if a new posting was necessary based on the potential change in the relief. Ms. Dunn stated that if the relief changes, then the posting will need to change if the relief is no longer appropriate. Chairman Scholz stated that if there is additional relief that is needed, there will still be time to make sure the new posting will reflect the necessary relief prior to the meeting based on the application deadline. The applicant will have until August 18th to ask for additional relief for the sake of additional posting information if needed. Attorney Muller does believe that that will be an appropriate amount of time to review the design and to coordinate with staff. The applicant understands that the original application may need to be withdrawn and a new application may need to be filed if the variance relief changes.

A motion was made by Ms. Gogumalla to move Case #11-2020 to September 8th, 2020.

Seconded by Mr. Hughes. Roll call vote: Chairman Scholz, Ms. Gogumalla, Mr. Shea, Ms. Dunn, Mr. Hughes- yes. Vote 5-0. Motion passes.

Case #17-2020: Parcel 17-I-110

(Continued from July 14, 2020)

Applicant – The Dubay Group, Inc. – Doug MacGuire, PE

Owner – Branden and Cheryl Tsetsilas

Location – 29 Walkey Road

Zoning District - Residential A District and Cobbetts Pond & Canobie Lake

Watershed Protection Overlay District (WPOD)

Variance relief is requested from the following **Section(s) 200, 603.1.3, 702 & Appendix A-1**. Specifically from **Sec. 200**: To allow an accessory building as the only structure on the lot, where the detached building which is subordinate to the main use or building and located on the same lot with the main building is required. And from **Sec. 603.1.3** to allow for an accessory building as the permitted use on the lot where such use is not permitted. And from **Section(s) 702 and Appendix A-1**: To allow construction of a new 816 sf accessory building (garage) on a pre-existing non-conforming lot, with two frontages Walkey Road and Cobbetts Pond. To allow a lot size of 4,301 sf, where a minimum land area of 50,000 sf is required. To allow 96.4'

frontage on Walkey Road (a private road/right of way) where 175' of frontage is required on a public road. To allow a front yard setback of 9' (Walkey Road) and to allow a modified front yard setback of 18' (Cobbetts Pond), where 50' is required. To allow an east side yard setback of 15' and a west side yard setback of 22' where 30' is required.

Mr. Doug MacGuire of the Dubay Group and Owner Representative, addressed the Board. Ms. Dunn is recusing herself from the case. Mr. MacGuire was asked if he would like to continue in front of a 4-member Board. Mr. MacGuire said he would. Mr. MacGuire stated that the two takeaways during the last presentation was about drainage and about the removal of the pine trees. Mr. MacGuire stated that it was necessary to move forward with the Shoreland Protection permit eventually so the applicant did put together the drainage and plant removal as well. There is also gravel parking on the more detailed plan. Mr. MacGuire stated they have a reduction in overall impervious surface area and there would also be a porous paver driveway omitting the need for a roof recharge system. Mr. MacGuire stated that the pine trees are being removed from the property as well. The proposal will include 7 new trees and blueberry bushes which will allow the area to naturalize. There is more buffering and absorption of any run off. There will be a more buffered shore front with these planting according to Mr. MacGuire.

Chairman Scholz asked about the hydrological study and why the roof run off was not necessary. Mr. MacGuire went back to the existing conditions of the property. Currently, there is a compacted surface that is not infiltrating water at present and acting as impervious surface. There is a pre and post analysis in the study as well and Mr. MacGuire spoke to the figures in the study; they are minimal because the area of the lot is so small. In the post development condition, there is a reduction in run off rate in all storm events due to elimination of the gravel area and the addition of the porous pavers. Mr. MacGuire stated there is a reduction of impervious surface even with the vegetative buffer that the applicant is not taking credit for.

Chairman Scholz is not sure why there is not ground infiltration for the roof on the application. Mr. MacGuire stated that the gravel is acting like impervious surface even when it is listed as such. Mr. MacGuire stated they are doing this the same way they would for any size lot but the impact is insignificant. Chairman Scholz asked about grading. Mr. MacGuire stated that the lot will drop about 4 feet and that height will be made up within the height of the structure.

Mr. Shea asked about the Shoreland Protection Permit; he asked what factors were considered for that permit. Mr. MacGuire stated that they look to see if it was a lot of record. Mr. MacGuire stated that the state will look to see if they are under a certain percent of impervious coverage. The drainage study will also be evaluated. The mitigation will also be looked at and what is being planted and what is being removed in terms of vegetation. Mr. MacGuire stated they also look at lot coverage. Mr. Shea asked if they were looking at the run off and the vegetation. Mr. MacGuire stated they were looking at that and the mitigation as well.

Mr. Arsenault stated that the blueberries that were added were not part of the hydrological study. Mr. MacGuire stated he appreciates that point from Mr. Arsenault. Mr. MacGuire stated that the 13 bushes will be part of the root structure on the lot and in the area. The blueberries bushes will allow for both treatment and mitigation. Mr. MacGuire stated that a roof is not considered a high-level contaminant.

Mr. MacGuire pointed out that this is not being used as a single-family home; this structure is being used as a garage. There are rows of existing evergreens on the other property owned by the applicant which travel onto this site as well. Chairman Scholz asked of the plantings satisfied the requirement for planting at the state level. Mr. MacGuire stated that the planting calculation are not necessary on this type of lot for this type of purpose. Mr. MacGuire also said that credit is also given for current vegetation. Mr. MacGuire stated that the state would like local approval before going for the Shoreland Protection Permit.

Chairman Scholz opened discussion up to the public at 8:10pm.

Mr. Shea asked if there was a letter from the Conservation Commission; it had been read at the previous meeting. There was a restoration plan put together by the landscape architect. The pines are on site currently and there is also the service berry that was recommended by the architect. The Board discussed the deed restriction that there is no intent to put a house on the lot and Chairman Scholz asked about the intent to install a garage and not a house. Chairman Scholz asked about the maintenance of the porous pavers. Mr. MacGuire stated that the porous pavers are not likely to need to salt or sand the surface. Mr. MacGuire stated that if there are any Board members who have questions about the variance criteria, he is happy to answer any questions. Mr. MacGuire is also happy to go over the variance criteria once again for the Board.

A motion was made by Mr. Shea to go into Deliberative Session. Seconded by Mr. Hughes. Roll call vote: Chairman Scholz, Ms. Gogumalla, Mr. Shea, Mr. Hughes- yes. Vote 4-0. Motion passes.

Chairman Scholz stated that the plan set in substantially better than what had been presented to the Board. There are notes on page 3 that talk about the preservation of the area. There is also a maintenance schedule of the porous pavers. Also, the applicant is willing to enter the deed restriction on the lot as well that there will not be a home put on the lot. Mr. Shea sees this as a reasonable use of the property and the applicant has taken many steps to mitigate what is happening on the property. Ms. Gogumalla asked if the structure on the property was a house (and not a proposed garage), what else will be added to help mitigate the property. Chairman Scholz stated that a house does not have to have anything for mitigation purposes; it is possible that the water would drain directly to the ground. This structure has been measured for a 50-year storm event.

Mr. Hughes asked about the barrier of plants including the blueberries and what protections would be in place to preserve those over time. Chairman Scholz stated that they are on the plan and code enforcement would allow for them to continue to be maintained.

Chairman Scholz stated that he believes the first 2 criteria and that this is a unique proposal that has come before the Board. The property owner could do something else but they are opting to install a garage. The mitigation for the rain and the plantings on the plan help to meet the criteria. There is also evidence to support the 4th criteria as well. Also, the size of the lot is very small and the homeowners are looking to install a garage and not a home. Mr. Shea is in agreement with Chairman Scholz.

A motion was made by Mr. Shea for Case 17-2020 to grant relief as requested from the following Section(s) 200, 603.1.3, 702 & Appendix A-1. Specifically from Sec. 200: To allow an accessory building as the only structure on the lot, where the detached building which is subordinate to the main use or building and located on the same lot with the main building is required. And from Sec. 603.1.3 to allow for an accessory building as the permitted use on the lot where such use is not permitted. And from Section(s) 702 and Appendix A-1: To allow construction of a new 816 sf accessory building (garage) on a pre-existing non-conforming lot, with two frontages Walkey Road and Cobbetts Pond. To allow a lot size of 4,301 sf, where a minimum land area of 50,000 sf is required. To allow 96.4' frontage on Walkey Road (a private road/right of way) where 175' of frontage is required on a public road. To allow a front yard setback of 9' (Walkey Road) and to allow a modified front yard setback of 18' (Cobbetts Pond), where 50' is required. To allow an east side yard setback of 15' and a west side yard setback of 22' where 30' is required per the 4-page plan dated July 21st 2020 and signed and dated by the Chair on July 28th, 2020 with the following conditions:

1. The deed will contain a restriction stating that no dwelling will be constructed on this lot and no dwelling will be installed on this lot
2. Proper maintenance of the porous pavers
3. Incorporating all representations made by the applicant and their agents as part of this approval
4. The garage will not be used as a dwelling unit.

Seconded by Mr. Hughes.

The Board discussed the restriction around the dwelling unit.

Roll call vote: Chairman Scholz, Ms. Gogumalla, Mr. Shea, Mr. Hughes- yes.

Vote 4-0. Motion passes.

The Chair advised of the 30-day appeal period.

Public Meeting

The Board had a discussion about the microphone in the room at Community Development and how difficult it is to hear those who are in Community Development clearly. The Board stated that additional microphones might also help the communication.

A motion was made by Ms. Gogumalla to adjourn at 9:02pm. Seconded by Mr. Shea. Roll call vote: Chairman Scholz, Ms. Gogumalla, Mr. Shea, Mr. Hughes, Ms. Dunn- yes.

Vote 5-0. Motion passes.

Respectfully submitted by Anitra Lincicum